

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.1886 OF 2022
IN CRIMINAL APPEAL NO.408 OF 2023**

Balu s/o Kisan Pandit,
Age : 44 years, Occu.: Labour,
R/o.: Navnathnagar, Garkheda Parisar,
Aurangabad. ... **APPLICANT**

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
Police Station Mukundwadi,
Aurangabad.
2. X. Y. Z. ... **RESPONDENTS**

...

Advocate for the Applicant : Mr. R. B. Narvade (Appointed)
Advocate for Respondent No.1-State : Mr. P. M. Kulkarni
Advocate for Respondent No.2:Mr. Mahendra Kochar (Appointed)

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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 01/11/2023.**

P. C. :

1. Heard rival submissions.
2. The applicant, who is original accused, is seeking suspension of his substantive sentence of imprisonment for the offence punishable under Sections 376 (2)(f), 506 of IPC and under Sections 4 & 6 of POCSO Act as well as under Section 11 of

Prohibition of Child Marriage Act, 2006 in Special Case (POCSO)No.82 of 2015. The maximum punishment of imprisonment imposed upon the applicant / accused is of 20 years.

3. The learned counsel for the applicant / accused submits that the applicant was on bail during the trial. Moreover, there was delay on the part of the victim in lodging FIR. According to him, the first incident of forcible sexual intercourse took place in the year, 2014 as per the complaint lodged by the victim, but she reported the same, after about one year. According to him, the medical evidence is not material since the victim was already married and the charge under Section 11 of Prohibition of Child Marriage Act, 2006 was framed just before two days of the conviction.

4. Learned A.P.P. strongly opposed the application on the ground that the offence is serious and if the substantive sentence of imprisonment is suspended and the applicant is released on bail then there is danger to the life of the victim.

5. On the other hand, the learned counsel for respondent No.2 victim also opposed the application on the ground that victim's evidence is found trustworthy and it was important to note that the

applicant - accused committed such heinous crime being step-father of the victim.

6. Admittedly, there appears delay in lodging the complaint against the applicant, who is step-father of the victim. However, it has come on the record in the evidence of the victim that the applicant not only committed the act of forcible sexual intercourse repeatedly but he intentionally arranged her marriage with his relative so that he could continue such heinous crime even after her marriage. Considering the relationship between the applicant and the victim, it was not at all expected from the applicant to commit such crime. Admittedly, victim was minor at the time of these incidents of forcible sexual intercourse and even on the date of her marriage. Though the charge under Section 11 of Prohibition of Child Marriage Act, 2006 was framed belatedly and just prior to the conviction, but the record shows that it was explained to the applicant and the learned counsel for the applicant before the trial court by filing pursis intimated the court that on such alteration of charge the applicant was not intending to lead any additional evidence. Therefore, considering all these aspects, I am not inclined to suspend the substantive sentence of

imprisonment imposed upon the applicant. Accordingly, the application stands dismissed and disposed of.

7. The legal fees of both the appointed learned counsel for the applicant as well as respondent No.2 be quantified as per rules.

(SANDIPKUMAR C. MORE, J.)

VSM/-